

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

FREDERICK TERRELL MYLES,

Petitioner,

v.

RICK COURSEY,

Respondent.

Case No. 2:12-cv-00331-JE

OPINION AND ORDER

Corinne J. Lai, P.O. Box 2218, Lake Oswego, OR 97035. Attorney for Petitioner.

Ellen F. Rosenblum, Attorney General, and Nick M. Kallstrom, Assistant Attorney General, Oregon Department of Justice, 1162 Court Street N.E., Salem, OR 97301. Attorneys for Respondent.

Michael H. Simon, District Judge.

United States Magistrate Judge John Jelderks issued Findings and Recommendation in this case on December 31, 2013. Dkt. 55. Judge Jelderks recommended that Frederick Terrell Myles's ("Petitioner") Petition for Writ of Habeas Corpus, Dkt. 2, be denied and a judgment should be entered dismissing this case with prejudice. Dkt. 55 at 5. Judge Jelderks also recommended that this Court decline to issue a Certificate of Appealability on the basis that

Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). *Id.*

Under the Federal Magistrates Act (“Act”), the Court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

Petitioner timely filed an objection. Dkt. 57. Petitioner argues that the court’s failure to appoint counsel in a timely manner excused Petitioner’s failure to plead, as *pro se* litigant, the sentencing claim omitted from his petition. Petitioner also objects to the finding that the omitted sentencing claim would not prevail on the merits. The Court has reviewed *de novo* those portions of Judge Jelderks’s Findings and Recommendation to which Petitioner has objected, as well as Petitioner’s objections and Respondent’s response. The Court agrees with Judge Jelderks’s reasoning regarding Petitioner’s lack of a Sixth Amendment right under the United States Constitution to the immediate appointment of counsel in his habeas corpus appeal and that Petitioner’s sentencing claim lacks merit. The Court adopts those portions of the Findings and Recommendation.

For those portions of a magistrate’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report[.]”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (the court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of

objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate’s recommendations for “clear error on the face of the record.”

For those portions of Judge Jelderks’s Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court **ADOPTS** Judge Jelderks’s Findings and Recommendation, Dkt. 55. The Petition for Writ of Habeas Corpus, Dkt. 2, is denied and the Court dismisses this case with prejudice. The Court declines to issue a Certificate of Appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 25th day of March, 2014.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge